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10 JUL 1980

OCA 2155-89

MEMORANDUM FOR: Deputy Director of Central Intelligence

FROM: E. Norbert Garrett
Director of Congressional Affairs

SUBJECT: Markup of the Intelligence Authorization Bill

1. The Comptroller and the Intelligence Community Staff have provided, or will shortly provide to you, background material covering Agency and Intelligence Community budgetary issues that may come up during the SSCI markup of the Intelligence Authorization Bill. I thought it would be useful for you to also have background material on legislative issues.

2. We have received no indication that Members of the Committee will attempt to mandate access to Inspector General reports, as was done by the House Intelligence Committee. It is possible that Dave McCurdy might have spoken with his fellow Oklahoman, Dave Boren, on this issue and you may get a question regarding it. For your information, we have attached at Tab A, talking points that we prepared for the Director's use in his upcoming meeting with Chairman Beilenson on this issue.

3. The major legislative issue from the Agency and Administration's perspective will be a possible amendment by Senator Cohen to restrict the Reserve for Contingencies. The exact scope of the restriction has not yet been agreed upon. One possible restriction would be to prohibit the Agency from using the Reserve to finance covert actions that have not been reported to the Intelligence Committees. Senator Cohen will introduce this amendment if he is unable to secure agreement with the NSC on the contents of a letter from the President on the President's authority to delay notice of a Finding. The NSC and Senator Cohen are currently deadlocked on this issue. Although Senator Cohen and the NSC have agreed that the President has the constitutional power to delay notice for longer than a few days, the NSC will not agree to Senator Cohen's demand that the President acknowledge that the Intelligence Oversight Act requires notice within two days of a Finding. Senator Cohen has stated that he will review the substance of his negotiations with the NSC during the markup.

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4. We recommend that you defer to the White House and NSC on the legal issues of the President's constitutional authorities and the proper interpretation of the Intelligence Oversight Act. You can take this opportunity to reiterate the position of the Director, that in almost all cases the Intelligence Committees will receive prior notice of a covert action, but that the law needs to remain flexible enough to allow for those rare and extraordinary circumstances where a delay in Congressional notice is warranted. If asked to comment on the proposed restrictions on the Reserve, I recommend that you point out Administration opposition to the amendment since the amendment takes away the ability of the President to carry out a covert action in situations where the President determines that prior notice cannot be provided.

5. If you have an opportunity during the markup, you may wish to consider commenting on other legislative provisions that we expect will be contained in the Bill and some provisions that were omitted. Attached at Tab B. are talking points you can use on these provisions.



E. Norbert Garrett

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Attachments:

Tab A: Talking Points for Opposing McCurdy Amendment
 Tab B: Legislative Language

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